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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor:	ZOLLER, PANU K.		
Application No.:	10/817439	Confirmation No.:	2823
Filed:	April 1, 2004	Group Art Unit	1794
Title:	ROLL STABILIZING RELEASE LINER		

REPLACEMENT BRIEF ON APPEAL

Mail Stop: Appeal Brief-Patents
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March 10, 2009 /Irina Hass/

Date Signed by: Irina Hass

Dear Sir:

This is an appeal from the Office Action mailed on August 28, 2008, in light of the Advisory Action mailed October 21, 2008, finally rejecting claims 1-53 and 55.

This Replacement Brief on Appeal replaces the Brief on Appeal filed March 10, 2009 and corrects the listing of claims to reflect the status of this application as being a Reissue Application. The fee fore filing an Appeal Brief was filed with the original Brief on Appeal and it is believed that no additional fee is due.

Fees

☒ Any required fee under 37 CFR § 41.20(b)(2) will be made at the time of submission via EFS-Web. In the event fees are not or cannot be paid at the time of EFS-Web submission, please charge any fees under 37 CFR § 1.17 which may be required to Deposit Account No. 13-3723.

☐ Please charge any fees under 37 CFR §§ 37 CFR § 41.20(b)(2) and 1.17 which may be required to Deposit Account No. 13-3723.

☒ Please charge any additional fees associated with the prosecution of this application to Deposit Account No. 13-3723. This authorization includes the fee for any necessary extension of time under 37 CFR § 1.136(a). To the extent any such extension should become necessary, it is hereby requested.

☒ Please credit any overpayment to the same deposit account.

A Notice of Appeal in this application was filed electronically, and was received in the USPTO on December 10, 2008.

A Petition for Extension of Time under 37 CFR § 1.136(a) was filed with this Appeal Brief.

Appellants request the opportunity for a personal appearance before the Board of Appeals to argue the issues of this appeal. The fee for the personal appearance will be timely paid upon receipt of the Examiner's Answer.

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REAL PARTY IN INTEREST

The real party in interest is 3M Company of St. Paul, Minnesota and its affiliate 3M Innovative Properties Company of St. Paul, Minnesota.

RELATED APPEALS AND INTERFERENCES

This application is a reissue of US 6,365,254.

Appellants are unaware of any related appeals or interferences.

STATUS OF CLAIMS

Claim 54 was canceled.

Claims 1 to 53 and 55 are pending.

Claims 1 to 53 and 55 stand rejected.

Claims 1 to 53 and 55 are on appeal.

STATUS OF AMENDMENTS

No amendments were filed after the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The present disclosure provides a release liner comprising a roll stability layer. One embodiment of such a roll stability layer – as part of an adhesive tape assembly – is shown in Figs. 1 and 2. In the following summary, the reference numerals refer to Figs. 1 and 2.

Independent claim 1

Claim 1 provides an adhesive tape assembly (20). The assembly comprises a double-sided adhesive tape (22) and a release liner (10). The double-sided adhesive tape (22) comprises a front adhesive side (24) comprising a heat-activated adhesive layer (26) and a back adhesive side (28) comprising a pressure-sensitive adhesive layer (30). The release liner (10) comprises a front liner side (16) comprising a release layer (12) and a back liner side (18) comprising a roll stability layer (14). The front liner side (16) comprising release layer (12) is in contact with, bonded to, and removable from the pressure-sensitive adhesive layer (30). As shown in Fig. 2, the back liner side (18) comprising the roll stability layer (14) contacts the heat-activated adhesive layer (26) when the adhesive tape assembly (20) is formed into a roll. (See, e.g., col. 2, lines 24-61; and col. 4, lines 39-58.)

The roll stability layer (14) comprises an ethylene vinyl acetate (EVA). (See, e.g., col. 2, lines 46-48; and col. 4, lines 51-54.) EVA roll stability layers are described at col. 5, line 22-56.

Dependent claim 10

Claim 10 depends from claim 1 and further requires that the ethylene vinyl acetate has a sufficiently low content of vinyl acetate that said roll stability layer does not block with said heat activated adhesive layer. (Col. 5, lines 22-56.)

Dependent claim 11

Claim 11 depends from claim 10 and further requires that ethylene vinyl acetate have a vinyl acetate content of less than about 28% by weight. (Col. 5, lines 22-56.)

Independent claim 15

Claim 15 provides an adhesive tape assembly (20). The assembly comprises a double-sided adhesive tape (22) and a release liner (10). The double-sided adhesive tape (22) comprises a front adhesive side (24) comprising a heat-activated adhesive layer (26) and a back adhesive side (28) comprising a pressure-sensitive adhesive layer (30). The release liner (10) comprises a front liner side (16) comprising a release layer (12) and a back liner side (18) comprising a roll stability layer (14). The front liner side (16) comprising release layer (12) is in contact with, bonded to, and removable from the pressure-sensitive adhesive layer (30). As shown in Fig. 2, the back liner side (18) comprising the roll stability layer (14) contacts the heat-activated adhesive layer (26) when the adhesive tape assembly (20) is formed into a roll. (See, e.g., col. 2, lines 24-61; and col. 4, lines 39-58.)

The roll stability layer (14) comprises an ethylene vinyl acetate (EVA) (See, e.g., col. 2, lines 46-48; and col. 4, lines 51-54); and an anti-blocking agent in an amount so that a coefficient of friction of said roll stability layer, when measured against said heat-activated adhesive layer, remains substantially constant. (See col. 5, line 66 – col. 6, line 19.)

Dependent claim 16

Claim 16 depends from claim 15 and further requires that the roll stability layer comprise up to about 5% by weight of an anti-blocking agent based on the amount of ethylene vinyl acetate present. (See col. 5, line 66 – col. 6, line 19.)

Independent claim 21

Claim 21 provides an adhesive tape assembly (20) in the form of a roll. The assembly comprises a double-sided adhesive tape (22) and a release liner (10). The double-sided adhesive tape (22) comprises a front adhesive side (24) comprising a heat-activated adhesive layer (26) and a back adhesive side (28) comprising a pressure-sensitive adhesive layer (30). The release liner (10) comprises a front liner side (16) comprising a release layer (12) and a back liner side (18) comprising a roll stability layer (14). The front liner side (16) comprising release layer (12) is in contact with, bonded to, and removable from the pressure-sensitive adhesive layer (30), and the back liner side (18) comprising the roll stability layer (14) contacts the heat-activated

adhesive layer (26). The roll stability layer (14) has a contact surface which has a coefficient of friction, when measured against said heat-activated adhesive layer (26), which provides an increase in roll stability to said adhesive tape assembly (20) when formed into a roll. (See, e.g., Col. 2, lines 24-61; and Col. 4, lines 39-58.) The roll has a width, an outer circumferential edge, and a diameter that is at least about 20 times said width, and the roll and does not fall apart when held suspended along said outer circumferential edge. (See col. 3, lines 36-48; col. 9, lines 19-50; and Fig. 3.)

Dependent claim 55

Claim 55 depends from claim 21, and further requires the pressure-sensitive adhesive layer comprises an acrylic pressure-sensitive adhesive (col. 7, lines 7-12), the heat-activated adhesive layer comprises an olefinic material (col. 6, line 66 – col. 7, line 7), the release layer comprises at least one polyolefin (col. 4, line 55 – col. 5,line 10), and the roll stability layer comprising an ethylene vinyl acetate (col. 5, lines 21-56).

Independent claim 22

Claim 22 provides a release liner (10) in combination with a double-sided adhesive tape (22). The release liner comprises a front liner side (16) comprising a release layer (12) having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer (30) of said double-sided adhesive tape (22) and a back liner side (18) comprising a roll stability layer (14) having a second exposed contact surface for contacting a heat activated adhesive layer (26) of said double-sided adhesive tape (22) when said double-sided adhesive tape is in roll form. The release layer (12) comprises a polyolefin homopolymer. (See, e.g., col. 4, line 59 – col. 5, line 11.) The roll stability layer (14) comprises an ethylene vinyl acetate. (See, e.g., col. 2, lines 46-48; and col. 4, lines 51-54.)

Independent claim 29

Independent claim 29 provides a release liner (1) comprising a front liner side (16) comprising a release layer (12) having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer (30); and a back liner side (18) comprising a roll

stability layer (14) having a second exposed contact surface for contacting a heat activated adhesive layer (26). The roll stability layer (14) comprises an ethylene vinyl acetate and an anti-blocking agent in an amount so that a coefficient of friction of said roll stability layer (14), when measured against said heat-activated adhesive layer (26), remains substantially constant. (See col. 2, lines 24-61; col. 4, lines 39-58; col. 4, lines 51-54; and col. 5, line 66 – col. 6, line 19.)

Dependent claim 30

Claim 30 depends from claim 29 and further requires that the roll stability layer comprise up to about 5% by weight of an anti-blocking agent based on the amount of ethylene vinyl acetate present. (See col. 5, line 66 – col. 6, line 19.)

Independent claim 35

Independent claim 35 provides a release liner (10) in combination with a double-sided adhesive tape (22). The release liner comprises a front liner side (16) comprising a release layer (12) having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer (30) of said double-sided adhesive tape (22) and a back liner side (18) comprising a roll stability layer (14) having a second exposed contact surface for contacting a heat activated adhesive layer (26) of said double-sided adhesive tape (22) when said double-sided adhesive tape is in roll form. The release layer comprises a low density polyethylene, a linear low density polyethylene, or an ultra-low density polyethylene. (See, e.g., col. 4, line 59 – col. 5, line 11.) The roll stability layer comprises an ethylene vinyl acetate. (See, e.g., col. 2, lines 46-48; and col. 4, lines 51-54.)

Independent claim 38

Independent claim 38 provides a release liner (10). The release liner comprises front liner side (16) comprising a release layer (12) having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer (30), and a back liner side (18) comprising a roll stability layer (14) having a second exposed contact surface for contacting a heat activated adhesive layer (26). The release layer (12) comprises a polyolefin coated with an outer layer of silicone or fluorocarbon release material. (Col. 5, lines 12-21.) The roll stability

layer (14) comprises an ethylene vinyl acetate. (See, e.g., col. 2, lines 46-48; and col. 4, lines 51-54.)

Independent claim 40

Independent claim 40 provides an adhesive tape assembly (20). The assembly comprises a double-sided adhesive tape (22) and a release liner (10). The double-sided adhesive tape (22) comprises a front adhesive side (24) comprising a heat-activated adhesive layer (26), and a back adhesive side (28) comprising a pressure-sensitive adhesive layer (30). The release liner (10) comprises a front liner side (16) comprising a release layer (12), and a back liner side (18) comprising a roll stability layer (14). The front liner side (16) comprising release layer (12) is in contact with, bonded to, and removable from the pressure-sensitive adhesive layer (30). The adhesive tape assembly (20) also comprises a roll stability layer (14) in contact with the heat-activated adhesive layer (26) when the adhesive tape assembly (20) is formed into a roll. (See, e.g., col. 2, lines 24-61; and col. 4, lines 39-58.) The roll stability layer (14) comprises an ethylene vinyl acetate. (See, e.g., col. 2, lines 46-48; and col. 4, lines 51-54.)

Dependent claim 45

Claim 45 depends from claim 40 and further requires that the ethylene vinyl acetate has a sufficiently low content of vinyl acetate that said roll stability layer does not block with said heat activated adhesive layer. (Col. 5, lines 22-56.)

Dependent claim 46

Claim 46 depends from claim 40 and further requires that the roll stability layer further comprise an anti-blocking agent in an amount so that a coefficient of friction of said roll stability layer, when measured against said heat-activated adhesive layer, remains substantially constant. (See col. 5, line 66 – col. 6, line 19.)

Independent claim 47

Independent claim 47 provides a roll stable liner (10) for use with a double-sided adhesive tape (22). The liner (10) comprises a front liner side (16) having a first exposed contact

surface comprising a polyolefin homopolymer bondable to and removable from a pressure sensitive adhesive layer (30); and a back liner side (18) comprising a roll stability layer (14) having a second exposed contact surface for contacting a heat activated adhesive layer (26). The roll stability layer (14) comprises an ethylene vinyl acetate and up to about 5% by weight of an anti-blocking agent based on the amount of ethylene vinyl acetate present. (See col. 5, line 66 – col. 6, line 19.)

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

I. Claims 1-3, 7-9, 22-24, 31-32, 35, 38, 40-42, and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. [US 5,178,924].

II. Claims 4-5, 43-44, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. [US 5,178,924] in view of Reinders [US 6,037,028].

III. Claims 6, 10-21, 25-30, 33-34, 36-37, 39, 45-46 and 51-53, are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. [US 5,178,924] in view of Johnson et al. [US 5,167,995].

ARGUMENTS

I. Claims 1-3, 7-9, 22-24, 31-32, 35, 38, 40-42, and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. [US 5,178,924].

A. CLAIMS 1-3, 7-9, AND 31-32.

Claims 2-3, 7-9, and 31-32 depend from, and stand or fall together with, claim 1.

Claim 1 clearly and unambiguously requires a release liner comprising two separate layers; i.e., a release layer and a roll stability layer, wherein the roll stability layer comprises an ethylene vinyl acetate. Because the Patent Office has failed to provide a legally sufficient showing of at least these elements of the claimed invention, the pending rejection can not be sustained. ("To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). (See MPEP § 2143.03))

1. THE PATENT OFFICE'S "SUITABILITY FOR ITS INTENDED PURPOSE" ARGUMENT IS LEGALLY AND FACTUALLY FLAWED.

Each pending rejection relies on the following legally invalid application of the law to the facts of the pending application:

> … since Johnson ([US 5,178,924]) teaches that various copolymers can be used to form the release layer, including ethylene vinyl acetate, ethylene acrylic acid, etc. [col. 4, ll. 54-65], it would have been obvious to one of ordinary skill in the art to substitute ethylene acrylic acid copolymer with the ethylene vinyl acetate, and mixing with a desired level of a tackifier for roll stability, because the selection of a known equivalent material based on its suitability for its intended use supported a *prima facie* obviousness determination. See MPEP § 2144.07.

(Final Office Action dated August 28, 2008; at page 3.)

Although the selection of a known material based on its suitability for its intended use may support a *prima facie* obviousness determination (see *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945)); the Patent Office has failed to establish such suitability. First, it is critical to recognize that the Patent Office has relied solely on Johnson's [US 5,178,924] purported teaching of the equivalence of ethylene vinyl acetate and ethylene acrylic acid as the **release layer** – a conclusion based solely on the fact that both materials were included in a list of "illustrative examples of homopolymers and copolymers that

may be used in the release layer" of Johnson's [US 5,178,924] release liner. (See col. 4, lines 50-66.) However, it is the roll stability layer, not the release layer, of claim 1 of the present invention that must comprise an ethylene vinyl acetate.

Like the claimed invention, Johnson [US 5,178,924] describes a second layer (i.e., a friction enhancing layer), separate and distinct from its release layer. The Patent Office has failed to provide any evidence that Johnson [US 5,178,924] describes, teaches or suggests (1) any art recognized equivalence between ethylene vinyl acetate and ethylene acrylic acid for a roll stability or friction enhancing layer; or (2) any art recognized equivalence between materials suitable for use in a release layer and materials suitable for use as roll stability or friction enhancing layers.

For at least these reasons, the Patent Office has failed to show that ethylene vinyl acetate is a known equivalent to ethylene acrylic acid for use as a roll stability layer or friction enhancing agent. For at least these reasons, the Patent Office's reliance on MPEP § 2144.07 (i.e., the selection of a known equivalent material based on its suitability for its intended use) to support a *prima facie* obviousness determination is legally invalid and can not be sustained.

2. OBVIOUSNESS CAN NOT BE BASED ON THE MERE FACT THAT THE COMPONENTS AT ISSUE ARE FUNCTIONAL OR MECHANICAL EQUIVALENTS.

"In order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on applicant's disclosure or the mere fact that the components at issue are functional or mechanical equivalents." (*In re Ruff*, 256 F.2d 590, 118 USPQ 340 (CCPA 1958). (See MPEP § 2144.06) Thus, there is no legal basis for relying in any way on Johnson's [US 5,178,924] purported teaching of the functional equivalence of ethylene vinyl acetate and ethylene acrylic acid as exemplary materials for use in a release layer when attempting to determine the patentability of the present claims.

In response to similar arguments regarding the failure of the Patent Office to establish a proper *prima facie* case of obviousness, the Patent Office asserted:

> Applicants argue at Remarks page 2 that "the mere fact that two materials are listed as alternatives for one purpose (e.g., as a release material) does not provide a logically or legally sufficient basis for concluding that those two materials are functionally equivalent for any other purpose (e.g., as a roll stability layer or as a friction enhancing agent)."

> However, since Johnson '924 teaches modifying the release layer with tackifier (friction agent) to obtain improved roll stability, it is unseen that replacing the base copolymer of the release layer, exemplified ethylene acrylic acid copolymer, prevents surface property modifying effect of a tackifier (friction agent).

(Final Office Action dated August 28, 2008; Section 7, pages 5-6.)

First, the Patent Office's assertion that "Johnson '924 teaches modifying the release layer with tackifier" is far too broad and unsupported by the plain text of Johnson [US 5,178,924]. Johnson [US 5,178,924] merely teaches that ethylene/acrylic acid copolymers modified with a tackifier can form a friction enhancing agent. (See Johnson [US 5,178,924] at col. 5, lines 19-24.) The Patent Office has failed to show where Johnson [US 5,178,924] describes, teaches or suggests that "release layers" in general can be modified with a tackifier to form a friction enhancing agent. That is, simply because Johnson [US 5,178,924] may teach that one material that can be used a release agent (e.g., ethylene/acrylic acid copolymers) can also be modified with a tackifier to form a friction enhancing agent does not provide a legal, technical, or logical basis to conclude that any other material that can be used as a release agent (e.g., ethylene vinyl acetate) can also be modified with a tackifier to form a friction enhancing agent.

Second, the Patent Office's position that "it is unseen that replacing the base copolymer of the release layer, exemplified ethylene acrylic acid copolymer, prevents surface property modifying effect of a tackifier (friction agent)" is not supported by the clear and unambiguous content of Johnson [US 5,178,924]. Specifically, the modification of Johnson [US 5,178,924] proposed by the Patent Office is ***not*** the replacement of "the base copolymer of the release layer," rather; it is the replacement of the base polymer of the separate and distinct friction enhancing agent located on the opposite side of the substrate from the release layer. As discussed herein, the Patent Office has failed to provide any basis for such a substitution, or for attempting to apply Johnson's [US 5,178,924] purported teachings regarding its release layer (see col. 4, lines 41-66) to its independent teachings regarding the separate and distinct friction enhancing layer (see col. 4, line 67 – col. 5, line 24).

3. OBVIOUSNESS CAN NOT BE BASED SOLELY ON "COMMON KNOWLEDGE" IN THE ART WITHOUT EVIDENTIARY SUPPORT IN THE RECORD.

In the Final Office Action, the Patent Office relied on the assertion that the tackifier of Johnson [US 5,178,924] is a "friction agent." (See Final Office Action dated August 28, 2008; Section 7, pages 5-6.) However, the Patent Office has failed to provide any basis for its apparent attempt to separate the purported affect of the tackifier from that of the ethylene acrylic acid copolymer in the only friction enhancing agent described in Johnson [US 5,178,924]. Specifically, the Patent Office has failed to provide any basis for the assertion that the tackifier is the friction agent or that the tackifier alone accounts for a "surface property modifying effect." All that can be concluded from Johnson [US 5,178,924] is that

> Illustrative examples of such (friction enhancing) agents include ethylene/acrylic acid mixtures containing tackifiers which provide improved performance when applied to polyethylene support sheets for use on release liners used with tapes with back sides made of polyolefin-based, very low tack heat-activated adhesives.

(Johnson [US 5,178,924] at col. 5, lines 19-24.)

In response to similar arguments, the Patent Office asserted:

> However, it is well known to one of ordinary skill in the art that selecting a suitable tackifier improves the adhesiveness of a base material, and an increased adhesiveness inherently effects the surface friction property of the material to a greater level up to the point the material becomes fully adhesive to prevent friction completely.

(Advisory Action dated October 21, 2008; at page 2.)

First, Appellants note that this argument based on what is purportedly "well known to one of ordinary skill in the art" was raised for the first time in this Advisory Action. This fact was brought to the Patent Office's attention in a Request for Affidavit filed pursuant to 37 CFR § 1.104(d)(2) on October 28, 2008.

Second, Appellants requested evidence regarding the purported knowledge of one of ordinary skill in the art regarding both

(1) the Examiner's basis for asserting that the adhesiveness of any material can be improved by the addition of a tackifier; and

(2) the Examiner's basis for asserting that the level of adhesiveness can be controlled to provide a surface friction property.

The Patent Office has failed to provide the requested affidavit or any other evidence to support these assertions regarding what is purportedly "well known to one of ordinary skill in the art." Therefore, for at least the following reasons, the Patent Office's unsubstantiated assertions are not a proper legal basis for sustaining the rejection.

In KSR, the Supreme Court stated "'[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" (550 U.S. at l, 82 USPQ2d at 1396 (quoting In re Kahn 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).) This reinforces the well-established principal that

> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979). (See MPEP § 2144.03(A).)

Thus, "[t]he notice of facts beyond the record which may be taken by the examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute.'" (In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).)

At least two arguments set forth by the Patent Office as purportedly being "well-known" are not "capable of instant and unquestionable demonstration as being well-known" and are in fact in dispute. Specifically, (1) that the adhesiveness of any material can be improved by the addition of a tackifier; and (2) that the level of adhesiveness can be controlled to provide a surface friction property. Thus, for this reason alone, the rejection can not be sustained.

Furthermore, as clearly demonstrated above, the Patent Office's reliance on equivalence as a basis for its obviousness rejection is unfounded. Thus, the only possible basis for the pending rejection is this late-introduced and unsupported assertion regarding what is "well-known." This basis for rejection is clearly improper at least because:

> It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot

> simply reach conclusions based on its own understanding or experience—or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). (See MPEP § 2144.03(A).)

Also,

> Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. See Lee, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection).
>
> ...
>
> If such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See Soli, 317 F.2d at 946, 37 USPQ at 801; Chevenard, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made.

(See MPEP § 2144.03(B).)

As noted previously, Appellants requested an affidavit pursuant to 37 CFR § 1.104(d)(2), challenging the Patent Office's unsubstantiated reliance on what it purported to be "well-known". Following this request,

> the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). (MPEP § 2144.03(C))

Alternatively, if the Patent Office believed that Appellants' traversal was somehow inadequate, the Examiner should have provided Appellants an explanation as to why it was inadequate. (MPEP § 2144.03(C).)

Appellants have not received any documentary evidence from the Patent Office supporting these arguments or any explanation suggesting their request was inadequate. For at least these reasons, the Patent Office's rejection – based solely on what is purportedly well known in the art – is factually incorrect and legally insufficient. For at least these additional reasons, the pending rejections can not be sustained.

B. CLAIMS 22 TO 24

Claims 23 and 24 depend from and stand or fall together with claim 22.

In addition to the other elements recited therein, independent claim 22 requires a release liner comprising both a release layer and a roll stability layer, wherein the roll stability layer comprises an ethylene vinyl acetate. For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing of at least these elements of the claimed invention, and the pending rejection of claim 22 should be reversed.

C. CLAIM 35

In addition to the other elements recited therein, independent claim 35 requires a release liner comprising both a release layer and a roll stability layer, wherein the roll stability layer comprises an ethylene vinyl acetate. For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing of at least these elements of the claimed invention, and the pending rejection of claim 35 must be reversed.

D. CLAIM 38

In addition to the other elements recited therein, independent claim 38 requires a release liner comprising both a release layer and a roll stability layer, wherein the roll stability layer comprises an ethylene vinyl acetate. For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing of at least these elements of the claimed invention, and the pending rejection of claim 38 must be reversed.

E. CLAIMS 40 TO 42

Claims 41 and 42 depend from and stand or fall together with claim 40.

In addition to the other elements recited therein, independent claim 40 requires a release liner comprising a release layer. Claim 40 also requires a roll stability layer, wherein the roll stability layer comprises an ethylene vinyl acetate. For at least the reasons set forth in Sections

I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing of at least these elements of the claimed invention, and the pending rejection of claims 40 to 42 must be reversed.

F. CLAIMS 47 TO 50

Claims 48 to 50 depend from and stand or fall together with claim 47.

In addition to the other elements recited therein, independent claim 47 requires a release liner comprising a roll stability layer, wherein the roll stability layer comprises an ethylene vinyl acetate. For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing of at least these elements of the claimed invention, and the pending rejection of claims 47 to 50 must be reversed.

II. Claims 4-5, 43-44, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. [US 5,178,924] in view of Reinders [US 6,037,028].

A. CLAIMS 4 AND 5

Claims 4 and 5 depend from claim 1. These claims will stand or fall with claim 1. Specifically, for at least the reasons set forth in Sections I(A)(1)-(3) above, Claim 1 is patentable over Johnson et al. [US 5,178,924]. The Patent Office has failed to show how Reinders [US 6,037,028] overcomes these deficiencies. Thus, the rejection of claims 4 and 5 is unwarranted and should be reversed.

B. CLAIMS 43 AND 44

Claims 43 and 44 depend from claim 40. These claims will stand or fall with claim 40. Specifically, for at least the reasons set forth in Sections I(A)(1)-(3) above, Claim 40 is patentable over Johnson et al. [US 5,178,924]. The Patent Office has failed to show how Reinders [US 6,037,028] overcomes these deficiencies. Thus, the rejection of claims 43 and 44 is unwarranted and should be reversed.

C. CLAIM 55

Claim 55 depends from independent claim 21. The patentablility of claim 55 is argued separately and claim 55 will stand or fall independently of claim 21.

In addition to the elements recited in independent claim 21 from which claim 55 depends, and the other elements in claim 55, claim 55 requires a release liner comprising a roll stability

layer. The roll stability layer comprises an ethylene vinyl acetate. For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing of at least these elements of the claimed invention. The Patent Office has failed to show how Reinders [US 6,037,028] overcomes these deficiencies. Thus, the rejection of claim 55 is unwarranted and should be reversed.

III. Claims 6, 10-21, 25-30, 33-34, 36-37, 39, 45-46 and 51-53, are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. [US 5,178,924] in view of Johnson et al. [US 5,167,995]

A. CLAIM 6

Claim 6 depends from claim 1 and will stand or fall with claim 1. Specifically, for at least the reasons set forth in Sections I(A)(1)-(3) above, Claim 1 is patentable over Johnson et al. [US 5,178,924]. The Patent Office has failed to show how Johnson et al. [US 5,167,995] overcomes these deficiencies. Thus, the rejection of claim 6 is unwarranted and should be reversed.

B. CLAIM 10

Claim 10 depends from claim 1. For at least the reasons set forth in Section I (A) (1) to (3), above Claim 1 is patentable over Johnson et al. [US 5,178,924]. The Patent Office has failed to show how Johnson et al. [US 5,167,995] overcomes these deficiencies. Thus, the rejection of claim 10 is unwarranted and should be reversed.

In addition, claim 10 requires that the ethylene vinyl acetate of the roll stability layer have a sufficiently low content of vinyl acetate that said roll stability layer does not block with said heat activated adhesive layer. According to the Patent Office, "For claim 10, the vinyl acetate content is inherently low in the EVA of Johnson '924 because … said EVA is found to be an obvious equivalent to the exemplary stability material of ethylene acrylic acid and because the HAA (heat activated adhesive) is unrolled from the release liner [Johnson '924, col. 5, lines 15-24]." (Final Office Action dated August 28, 2008, pages 4-5.)

For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to show how the teachings of Johnson et al. [US 5,178,924] with respect to its release liner have any legal relevance to the claimed roll stability layer. In addition, the Patent Office has

failed to show how Johnson et al. [US 5,178,924] explicitly provides any guidance regarding the vinyl acetate content of the ethyl vinyl acetate release material of Johnson et al. [US 5,178,924].

Finally, the Patent Office's apparent reliance on "inherency" is clearly improper.

> The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted)

(MPEP § 2112 (IV).)

Clearly an ethylene vinyl acetate may have low or high levels of vinyl acetate. Thus, the Patent Office clearly erred in making an assertion regarding the inherent vinyl acetate content of the ethyl vinyl acetate release material of Johnson et al. [US 5,178,924] as no specific level of vinyl content "is necessarily present."

For at least these reasons, the rejection of claim 10 can not be sustained.

C. CLAIMS 11 TO 14, 25 TO 28, 36, 37, 39 AND 51-53

Claims 11 to 14 depend from independent claim 1.

Claims 25 to 28 depend from independent claim 21.

Claims 36 and 37 depend from independent claim 35.

Claim 39 depends from independent claim 38.

Claims 51 to 53 depend from independent claim 47.

Each of claims 11 to 14, 25 to 28, 36, 37, 39, and 51-53 depend from a patentable base claim; thus each of these claims is likewise patentable. In addition, claims 11 to 14, 25 to 28, 36, 37, 39, and 51-53 each recite specific ranges for the vinyl acetate content of the ethylene vinyl acetate of the roll stability layer. For the purposes of the following arguments, claims 11-14, 25-28, 36, 37, 39, and 51-53 will stand or fall together.

The Patent Office asserted "For claims 11-14, 25-28, 36, 37, 39, and 51-53 the content of the vinyl acetate … would have been obvious for providing stability to the roll, while permitting unwinding of the tape from said roll." (Final Office Action dated August 28, 2008; page 5.) However, "A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. (*In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). (See MPEP § 2144.05 (II) (B).)) Absent the improper reliance on the Appellants' specification, the Patent Office has failed to show any basis for concluding that one of ordinary skill in the art would identify vinyl acetate content as a results effective variable for either roll stability or unwinding of a tape from a roll. For at least these reasons the rejection of claims 11 to 14, 25 to 28, 36, 37, 39, and 51-53 can not be sustained.

D. CLAIM 15

Independent claim 15 provides an adhesive tape assembly comprising a double-sided adhesive tape and a release liner. The release liner comprises a front liner side comprising a release layer in contact with, bonded to and removable from a pressure-sensitive adhesive layer, and a back liner side comprising a roll stability layer which contacts a heat-activated adhesive layer when said adhesive tape assembly is formed into a roll. The roll stability layer comprises an ethylene vinyl acetate and an anti-blocking agent in an amount so that a coefficient of friction of the roll stability layer, when measured against the heat-activated adhesive layer, remains substantially constant. (See col. 5, line 66 – col. 6, line 19.)

For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing regarding the use of ethylene vinyl acetate as a roll stability layer; thus, for this reason alone the pending rejection of claim 15 can not be sustained.

In addition, according to the Examiner, "[f]or claims 15-16 and 29-30, the phrase "upto about 5%" is interpreted to include zero, hence the antiblocking amount is zero." However, claim 15 does not include this phrase. Rather, claim 15 requires the presence of "an anti-blocking agent in an amount so that a coefficient of friction of the roll stability layer, when measured against the heat-activated adhesive layer, remains substantially constant." As the

Patent Office has failed to show how the cited references describe, teach or suggest the presence of any amount of an antiblocking agent, the rejection of claim 15 can not be sustained.

E. CLAIM 16

Claim 16 depends from claim 15 and further requires that the roll stability layer comprise up to about 5% by weight of an anti-blocking agent based on the amount of ethylene vinyl acetate present. Although claim 16 uses the phrase "up to about 5%," claim 16 depends from claim 15, which requires the presence of "an anti-blocking agent in an amount so that a coefficient of friction of the roll stability layer, when measured against the heat-activated adhesive layer, remains substantially constant." Thus, the Patent Office's assertion that upto about 5% includes zero is not supported by the plain meaning of claim 16 in view of the requirements of the base claim from which it depends.

F. CLAIM 29

Independent claim 29 provides a release liner comprising a front liner side comprising a release layer having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer; and a back liner side comprising a roll stability layer having a second exposed contact surface for contacting a heat activated adhesive layer. The roll stability layer comprises an ethylene vinyl acetate and an anti-blocking agent in an amount so that a coefficient of friction of said roll stability layer, when measured against said heat-activated adhesive layer, remains substantially constant. (See col. 5, line 66 – col. 6, line 19.)

For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing regarding the use of ethylene vinyl acetate as a roll stability layer; thus, for this reason alone the pending rejection of claim 29 can not be sustained.

In addition, according to the Examiner, "[f]or claims 15-16 and 29-30, the phrase "upto about 5%" is interpreted to include zero, hence the antiblocking amount is zero." However, claim 29 does not include this phrase. Rather, claim 29 requires the presence of "an anti-blocking agent in an amount so that a coefficient of friction of the roll stability layer, when measured against the heat-activated adhesive layer, remains substantially constant." As the Patent Office has failed to show how the cited references describe, teach or suggest the presence of any amount of an antiblocking agent, the rejection of claim 29 can not be sustained.

G. CLAIM 30

Claim 30 depends from claim 29 and further requires that the roll stability layer comprise up to about 5% by weight of an anti-blocking agent based on the amount of ethylene vinyl acetate present. Although claim 30 uses the phrase "up to about 5%," claim 30 depends from claim 29, which requires the presence of "an anti-blocking agent in an amount so that a coefficient of friction of the roll stability layer, when measured against the heat-activated adhesive layer, remains substantially constant." Thus, the Patent Office's assertion that upto about 5% includes zero is not supported by the plain meaning of claim 30 in view of the requirements of the base claim from which it depends.

H. CLAIMS 17 TO 20

Claims 17 to 20 depend from claim 1 and will stand or fall with claim 1. Specifically, for at least the reasons set forth in Sections I(A)(1)-(3) above, Claim 1 is patentable over Johnson et al. [US 5,178,924]. The Patent Office has failed to show how Johnson et al. [US 5,167,995] overcomes these deficiencies. Thus, the rejection of claims 17 to 20 is unwarranted and should be reversed.

I. CLAIMS 21, 33, AND 34

Claims 33 to 34 depend from claim 21 and will stand or fall with claim 21.

Independent claim 21 provides and adhesive tape assembly in the form of a roll, comprising a double-sided adhesive tape and a release liner. The release liner comprises a release layer in contact with, bonded to and removable from a pressure-sensitive adhesive layer, and a back liner side comprising a roll stability layer which contacts said heat-activated adhesive layer. The roll stability layer has a contact surface which has a coefficient of friction, when measured against the heat-activated adhesive layer, which provides an increase in roll stability to said adhesive tape assembly when formed into a roll. The roll having a width, an outer circumferential edge, and a diameter that is at least about 20 times said width, wherein the roll does not fall apart when held suspended along said outer circumferential edge.

According to the Patent Office, "it would have been obvious to one having ordinary skill in the art to modify Johnson by providing the roll diameter to be at least 20 times the width of the tape, based on optimization through routine experimentation, with the roll stability layer therewith." (Final Office Action dated August 28, 20087; at page 5.) However, the Patent

Office has failed to provide any basis for this assertion; has not shown how the prior art provides any guidance on what "routine experimentation" would be required; or how and why this "routine experimentation" would lead to the structure recited in claim 21. For at least these reasons, the rejection of claims 21, 33 and 34 can not be sustained.

J. CLAIM 45

Claim 45 depends from claim 40. Claim 40 is patentable for at least the reasons stated above. (See, Section I(E).) In addition, claim 45 requires the ethylene vinyl acetate have a sufficiently low vinyl acetate content that said roll stability layer does not block with said heat activated adhesive layer.

For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing regarding the use of ethylene vinyl acetate as a roll stability layer; thus, for this reason alone the pending rejection of claim 45 can not be sustained. Although claim 45 was included in the list of claims are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. [US 5,178,924] in view of Johnson et al. [US 5,167,995], no specific arguments regarding this claim were presented by the Patent Office following Appellants' Request for Continued Examination. However, in view of the Patent Office's arguments with respect to other similar claims, Appellants note that the Patent Office has failed to show how the cited references describe, teach or suggest any relationship between the vinyl acetate content of an ethylene vinyl acetate roll stability layer and blocking with a heat activated adhesive. Thus, the rejection of claim 45 can not be sustained.

K. CLAIM 46

Claim 46 depends from claim 40. Claim 40 is patentable for at least the reasons stated above. (See, Section I(E).) In addition, claim 46 requires that the roll stability layer further comprise an anti-blocking agent in an amount so that a coefficient of friction of said roll stability layer, when measured against said heat-activated adhesive layer, remains substantially constant.

For at least the reasons set forth in Sections I(A)(1)-(3) above, the Patent Office has failed to provide a legally sufficient showing regarding the use of ethylene vinyl acetate as a roll stability layer; thus, for this reason alone the pending rejection of claim 46 can not be sustained. Although claim 46 was included in the list of claims are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. [US 5,178,924] in view of Johnson et al. [US 5,167,995], no

specific arguments regarding this claim were presented by the Patent Office following Appellants' Request for Continued Examination. However, in view of the Patent Office's arguments with respect to the other similar claims, Appellants note that the Patent Office has failed to show how any of the cited references describe, teach or suggest the presence of any amount of an antiblocking agent; thus, the rejection of claim 46 can not be sustained.

CONCLUSION

For the foregoing reasons, Applicants respectfully submit that the Examiner has erred in rejecting this application. Please reverse the Examiner on all counts.

Respectfully submitted,

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CLAIMS APPENDIX

**Note – this application is a reissue of US 6,365,254.

1. (Original) An adhesive tape assembly comprising:

a double-sided adhesive tape comprising:

a front adhesive side comprising a heat-activated adhesive layer, and

a back adhesive side comprising a pressure-sensitive adhesive layer; and

a release liner comprising:

a front liner side comprising a release layer in contact with, bonded to and removable from said pressure-sensitive adhesive layer, and

a back liner side comprising a roll stability layer which contacts said heat-activated adhesive layer when said adhesive tape assembly is formed into a roll, said roll stability layer comprising an ethylene vinyl acetate.

2. (Original) The adhesive tape assembly as set forth in claim 1, wherein said heat-activated adhesive layer has a contact surface which contacts said roll stability layer when said adhesive tape assembly is formed into a roll, and said contact surface has a smooth finish.

3. (Original) The adhesive tape assembly as set forth in claim 2, wherein said contact surface has an average surface roughness of up to about 26 microinches (0.00066 mm).

4. (Original) The adhesive tape assembly as set forth in claim 1, wherein said heat-activated adhesive layer comprises an olefinic material.

5. (Original) The adhesive tape assembly as set forth in claim 1, wherein said heat-activated adhesive layer comprises at least one of polyethylene and polypropylene.

6. (Original) The adhesive tape assembly as set forth in claim 1, wherein said pressure-sensitive adhesive layer comprises an acrylic foam pressure-sensitive adhesive.

7. (Original) The adhesive tape assembly as set forth in claim 1, wherein said release layer comprises at least one of a medium density polyethylene, a low density polyethylene, a linear low density polyethylene and an ultra-low density polyethylene.

8. (Original) The adhesive tape assembly as set forth in claim 7, wherein said release liner further comprises an intermediate layer disposed between said release layer and said roll stability layer, said intermediate layer comprising a high density polyethylene.

9. (Original) The adhesive tape assembly as set forth in claim 1, wherein said release layer has a contact surface, in contact with said pressure-sensitive adhesive layer, which is coated with a release material.

10. (Original) The adhesive tape assembly as set forth in claim 1, wherein said ethylene vinyl acetate has a sufficiently low content of vinyl acetate that said roll stability layer does not block with said heat activated adhesive layer.

11. (Original) The adhesive tape assembly as set forth in claim 1, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of less than about 28% by weight.

12. (Original) The adhesive tape assembly as set forth in claim 1, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 5% to about 24% by weight.

13. (Original) The adhesive tape assembly as set forth in claim 1, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 8% to about 20% by weight.

14. (Original) The adhesive tape assembly as set forth in claim 1, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 12% by weight.

15. (Original) An adhesive tape assembly comprising:

a double-sided adhesive tape comprising:

a front adhesive side comprising a heat-activated adhesive layer, and

a back adhesive side comprising a pressure-sensitive adhesive layer; and

a release liner comprising:

a front liner side comprising a release layer in contact with, bonded to and removable from said pressure-sensitive adhesive layer, and

a back liner side comprising a roll stability layer which contacts said heat-activated adhesive layer when said adhesive tape assembly is formed into a roll, said roll stability layer comprising an ethylene vinyl acetate,

wherein said roll stability layer further comprises an anti-blocking agent in an amount so that a coefficient of friction of said roll stability layer, when measured against said heat-activated adhesive layer, remains substantially constant.

16. (Original) The adhesive tape assembly as set forth in claim 15, wherein said roll stability layer comprises up to about 5% by weight of an anti-blocking agent based on the amount of ethylene vinyl acetate present.

17. (Original) The adhesive tape assembly as set forth in claim 1, wherein said roll stability layer has a coefficient of friction greater than about 0.4, when measured against said heat-activated adhesive layer.

18. (Original) The adhesive tape assembly as set forth in claim 1, wherein said roll stability layer has a coefficient of friction of greater than about 0.5, when measured against said heat-activated adhesive layer.

19. (Original) The adhesive tape assembly as set forth in claim 1, wherein said roll stability layer has a coefficient of friction of a least about 0.55, when measured against said heat-activated adhesive layer.

20. (Original) The adhesive tape assembly as set forth in claim 1, wherein said adhesive tape assembly has a width and is wound into a roll, with said roll stability layer contacting said heat-activated adhesive layer, and said roll has an outer circumferential edge, a diameter that is at least about 20 times said width and does not fall apart when held suspended along said outer circumferential edge.

21. (Amended) An adhesive tape assembly in the form of a roll, comprising:

a double-sided adhesive tape comprising:

a front adhesive side comprising a heat-activated adhesive layer of a polyolefin heat-activated adhesive, and

a back adhesive side comprising a pressure-sensitive adhesive layer of a pressure-sensitive adhesive; and

a release liner comprising:

a front liner side comprising a release layer in contact with, bonded to and removable from said pressure-sensitive adhesive layer, and

a back liner side comprising a roll stability layer which contacts said heat-activated adhesive layer, said roll stability layer having a contact surface which has a coefficient of friction, when measured against said heat-activated adhesive layer, which provides an increase in roll stability to said adhesive tape assembly when formed into a roll,

said roll having a width, an outer circumferential edge, and a diameter that is at least about 20 times said width, wherein said roll [and] does not fall apart when held suspended along said outer circumferential edge.

22. (Amended) A release liner in combination with a double-sided adhesive tape, said release liner comprising:

a front liner side comprising a release layer having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer of said double-sided adhesive tape, said release layer comprising a polyolefin homopolymer; and

a back liner side comprising a roll stability layer having a second exposed contact surface for contacting a heat activated adhesive layer of said double-sided adhesive tape when said double-sided adhesive tape is in roll form, said roll stability layer comprising an ethylene vinyl acetate.

23. (Original) The release liner as set forth in claim 22, wherein said release layer comprises a polyethylene having a density of up to about 0.92 g/cc.

24. (Original) The release liner as set forth in claim 22, wherein said release liner further comprises an intermediate layer disposed between said release layer and said roll stability layer, said intermediate layer having a higher density than said release layer.

25. (Original) The release liner as set forth in claim 22, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of less than about 28% by weight.

26. (Original) The release liner as set forth in claim 22, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 5% to about 24% by weight.

27. (Original) The release liner as set forth in claim 22, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content in the range of about 8% to about 20% by weight.

28. (Original) The release liner as set forth in claim 22, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 12% by weight.

29. (Original) A release liner comprising:

a front liner side comprising a release layer having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer; and

a back liner side comprising a roll stability layer having a second exposed contact surface for contacting a heat activated adhesive layer, said roll stability layer comprising an ethylene vinyl acetate;

wherein said roll stability layer further comprises an anti-blocking agent in an amount so that a coefficient of friction of said roll stability layer, when measured against said heat-activated adhesive layer, remains substantially constant.

30. (Original) The release liner as set forth in claim 29, wherein said roll stability layer comprises up to about 5% by weight of an anti-blocking agent based on the amount of ethylene vinyl acetate present.

31. (Original) The adhesive tape assembly as set forth in claim 1, wherein said release layer comprising a polyethylene having a density of up to about 0.92 g/cc.

32. (Original) The adhesive tape assembly as set forth in claim 1, wherein said release layer comprising a polyolefin having a contact surface, in contact with said pressure-sensitive adhesive layer, wherein the contact surface is coated with a silicone or fluorocarbon release material.

33. (Original) The adhesive tape assembly as set forth in claim 21, wherein said release layer comprising a polyethylene having a density of up to about 0.92 g/cc.

34. (Original) The adhesive tape assembly as set forth in claim 21, wherein said release layer comprising a polyolefin having a contact surface, in contact with said pressure-sensitive adhesive layer, wherein the contact surface is coated with a silicone or fluorocarbon release material.

35. (Amended) A release liner <u>in combination with a double-sided adhesive tape, said release liner</u> comprising:

a front liner side comprising a release layer having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer of said double-sided adhesive tape, said release layer comprising a low density polyethylene, a linear low density polyethylene, or an ultra-low density polyethylene; and

a back liner side comprising a roll stability layer having a second exposed contact surface for contacting a heat activated adhesive layer of said double-sided adhesive tape when said double-sided adhesive tape is in roll form, said roll stability layer comprising an ethylene vinyl acetate.

36. (Original) The release liner as set forth in claim 35, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 5% to about 28% by weight.

37. (Original) The release liner as set forth in claim 36, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 12% by weight.

38. (Original) A release liner comprising:

a front liner side comprising a release layer having a first exposed contact surface bondable to and removable from a pressure sensitive adhesive layer, said release layer comprising a polyolefin coated with an outer layer of silicone or fluorocarbon release material; and

a back liner side comprising a roll stability layer having a second exposed contact surface for contacting a heat activated adhesive layer, said roll stability layer comprising an ethylene vinyl acetate.

39. (Original) The release liner as set forth in claim 38, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 5% to about 28% by weight.

40. (New) An adhesive tape assembly comprising:

a double-sided adhesive tape comprising:

a front adhesive side comprising a heat-activated adhesive layer, and

a back adhesive side comprising a pressure-sensitive adhesive layer; and

a release liner comprising:

a front liner side comprising a release layer in contact with, bonded to and removable from said pressure-sensitive adhesive layer,

wherein a roll stability layer comprising an ethylene vinyl acetate is in contact with said heat-activated adhesive layer when said adhesive tape assembly is formed into a roll.

41. (New) The adhesive tape assembly as set forth in claim 40, wherein said heat-activated adhesive layer has a contact surface which contacts said roll stability layer when said adhesive tape assembly is formed into a roll, and said contact surface has a smooth finish.

42. (New) The adhesive tape assembly as set forth in claim 41, wherein said contact surface has an average surface roughness of up to about 26 microinches (.00066 mm).

43. (New) The adhesive tape assembly as set forth in claim 40, wherein said heat-activated adhesive layer comprises an olefinic material.

44. (New) The adhesive tape assembly as set forth in claim 40, wherein said heat-activated adhesive layer comprises at least one of polyethylene and polypropylene.

45. (New) The adhesive tape assembly as set forth in claim 40, wherein said ethylene vinyl acetate has a sufficiently low vinyl acetate content that said roll stability layer does not block with said heat activated adhesive layer.

46. (New) The adhesive tape assembly as set forth in claim 40, wherein said roll stability layer further comprises an anti-blocking agent in an amount so that a coefficient of friction of said roll stability layer, when measured against said heat-activated adhesive layer, remains substantially constant.

47. (New) A roll stable liner for use with a double-sided adhesive tape, said liner comprising:

a front liner side having a first exposed contact surface comprising a polyolefin homopolymer bondable to and removable from a pressure sensitive adhesive layer; and

a back liner side comprising a roll stability layer having a second exposed contact surface for contacting a heat activated adhesive layer, said roll stability layer comprising an ethylene vinyl acetate and up to about 5% by weight of an anti-blocking agent based on the amount of ethylene vinyl acetate present.

48. (New) The liner as set forth in claim 47, wherein the polyolefin homopolymer of said first exposed contact surface comprises a polyethylene having a density of up to about 0.92 g/cc.

49. (New) The liner as set forth in claim 47, wherein the polyolefin homopolymer of said first exposed contact surface comprises at least one of a medium density polyethylene, a low density polyethylene, a linear low density polyethylene, or an ultra-low density polyethylene.

50. (New) The liner as set forth in claim 47 further comprising an intermediate layer disposed between said first exposed contact surface and said second exposed contact surface, said intermediate layer having a higher density than the polyolefin homopolymer of said first exposed contact surface.

51. (New) The liner as set forth in claim 47, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of less than about 28% by weight.

52. (New) The liner as set forth in claim 47, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content of about 5% to about 24% by weight.

53. (New) The liner as set forth in claim 47, wherein said roll stability layer comprises an ethylene vinyl acetate having a vinyl acetate content in the range of about 8% to about 20% by weight.

54. (Cancelled)

55. (New) The adhesive tape assembly as set forth in claim 21, wherein said pressure-sensitive adhesive layer comprises an acrylic pressure-sensitive adhesive, said heat-activated adhesive layer comprises an olefinic material, said release layer comprises at least one polyolefin, and said roll stability layer comprising an ethylene vinyl acetate.

EVIDENCE APPENDIX

NONE.

RELATED PROCEEDINGS

NONE.